

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN HOLCOMB.,

Defendant.

CASE NO. CR21-75-RSL

UNOPPOSED MOTION OF
AMERICAN CIVIL LIBERTIES
UNION AND AMERICAN CIVIL
LIBERTIES UNION OF
WASHINGTON FOR LEAVE TO
FILE AN *AMICI CURIAE* BRIEF IN
SUPPORT OF JOHN HOLCOMB
BY APRIL 15, 2022

**NOTE ON MOTION CALENDAR:
APRIL 15, 2022**

I. INTRODUCTION

American Civil Liberties Union (“ACLU”) and the American Civil Liberties Union of Washington (“ACLU-WA”) hereby respectfully submit this Motion for Leave to File an *Amici Curiae* Brief in support of the Defendant, John Holcomb. The filing of *amici*’s brief will not prejudice any party. Counsel for Defendant consents to the filing of this brief. Counsel for the United States does not oppose the filing of this brief as long as it is timely filed on or before the day Defense’s Reply is due, April 15. This Court may grant the ACLU and ACLU-WA leave to file an *amici curiae* brief by that date. *Cf.* Fed. R. App. P. 29 (a)(2), (6).

II. IDENTITY AND INTEREST OF AMICI CURIAE

AMERICAN CIVIL LIBERTIES UNION OF
WASHINGTON FOUNDATION
P.O. BOX 2728
SEATTLE, WA 98111
(206) 624-2184

1 The ACLU is a nationwide, nonprofit, nonpartisan organization dedicated to defending
2 the principles of liberty and equality embodied in the United States Constitution and national
3 civil rights laws. The ACLU-WA, a state affiliate of the national ACLU, is a statewide,
4 nonpartisan, nonprofit organization with over 135,000 members and supporters dedicated to the
5 preservation of civil liberties. The ACLU and ACLU-WA have a long history of involvement,
6 both as direct counsel and as *amicus curiae*, in cases involving the protection of rights under the
7 Fourth Amendment to the U.S. Constitution, including ensuring that those rights remain robust in
8 the face of evolving technology. The ACLU was counsel in *Carpenter v. United States*, 138 S.
9 Ct. 2206 (2018).

11 III. REASONS WHY MOTION SHOULD BE GRANTED

12 District courts have “broad discretion” to appoint *amici curiae*. *Skokomish Indian Tribe v.*
13 *Goldmark*, 2013 WL 5720053, at *1 (W.D. Wash. Oct. 21, 2013) (quoting *Hoptowit v. Ray*, 682
14 F.2d 1237, 1260 (9th Cir. 1982)). “District courts frequently welcome amicus briefs from non-
15 parties concerning legal issues that have potential ramifications beyond the parties directly
16 involved or if the amicus has ‘unique information or perspective that can help the court beyond
17 the help that the lawyers for the parties are able to provide.’” *NGV Gaming, Ltd. v. Upstream*
18 *Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (quoting *Cobell v. Norton*, 246
19 F. Supp. 2d 59, 62 (D.D.C. 2003)).

21 The Court should exercise its discretion to permit ACLU and ACLU-WA to file the
22 proposed amici brief. As nonprofit public interest legal organizations dedicated to the
23 preservation of civil liberties, ACLU and ACLU-WA have a strong interest in ensuring that
24 warrants issued for electronic devices do not lead to unconstitutionally broad searches. *Amici*
25 will draw upon their expertise to provide a strong Fourth Amendment perspective in this case, so
26

1 as to fulfill “the classic role of *amicus curiae* by assisting in a case of general public interest,
2 supplementing the efforts of counsel, and drawing the court’s attention to law that escaped
3 consideration.” *Miller-Wohl Co. v. Comm’r of Labor & Indus., State of Mont.*, 694 F.2d 203, 204
4 (9th Cir. 1982). ACLU and ACLU-WA submit that their experience and perspective as nonprofit
5 public interest legal organizations representing and advising individuals on civil liberties,
6 privacy, and surveillance practices will aid the Court in considering how to ensure that searches
7 of electronic devices comply with the Fourth Amendment.
8

9 IV. CONCLUSION

10 For these reasons, ACLU and ACLU-WA respectfully request the Court grant it leave to
11 file an *amicus curiae* brief.

12 DATED this 6th day of April, 2022.
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14 AMERICAN CIVIL LIBERTIES UNION OF
15 WASHINGTON FOUNDATION

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**Pro Hac Vice application forthcoming*